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Report on Partial Charter Revision (Municipal Measure No. 51);
Report on Public Transportation System Employees
Constitutional Amendment (State Ballot Measure No.1)

City Club of Portland (Portland, Or.)

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**REPORT
ON
PARTIAL CHARTER REVISION
(Municipal Measure No. 51)**

Act amending portions of Chapter VI, all of Chapters IX, XI, XII and XIII of city charter relating to: Dock Commission functions; local improvement procedures, assessments and collections; special city services; public facilities and works; and interpretation rules; to modernize, simplify, clarify and facilitate administration, under present governmental form.

To the Board of Governors,
The City Club of Portland:

I. ASSIGNMENT

This Committee was appointed to study and report on proposed revisions of Chapters VI (Commission of Public Docks), IX (Local Improvements; Assessments; Collections), XI (Special Services), XII (Public Facilities and Works) and XIII (Charter Revision and Construction) of the Portland City Charter. These revisions were adopted by the City Council on August 10, 1966.

A "No" vote on this measure leaves the Charter in its present form. A "Yes" vote substitutes revised provisions for portions of Chapter VI and all of Chapters IX, XI, XII and XIII.

II. BACKGROUND

The proposed revisions represent the continuation of a long range project of the City (through the City Attorney's office) to revise the entire City Charter by deleting archaic provisions, reorganizing material and, where applicable, broadening and updating the Charter to conform with present practices. Past City Club studies have referred to these changes as "housekeeping," but it is believed that this is no longer a true description of what is being attempted. The Act passed by the City Council placing this measure on the ballot says the revision is to:

"... remove ambiguities and inconsistencies, clarify certain provisions, delete obsolete or unnecessary matter, and to modify, simplify, clarify, broaden or make more specific various matters contained or implied in the charter and charter ordinances, and to facilitate more efficient administration."

It is the opinion of this Committee that the "housekeeping" notion must be abandoned and the words actually appearing in the Act be used to describe what is being attempted. Note, however, that the ballot title compares unfavorably with the wording of the Act because it omits the word "broaden."

A thorough report on Charter Revisions presented prior to 1962 is contained in City Club Bulletin, Vol. 43, No. 22, October 26, 1962, pages 593-602, and will not be presented here. Proposed Chapter VI contains new material and paragraphs which, together with other charter sections, were placed on the ballot in November, 1960 and defeated by the voters.⁽¹⁾ Those portions of Chapters IX, XI, XII and XIII contained in this year's ballot measure were the subject of a similar act in November, 1964. At that time a City Club committee recommended that these revisions not be adopted, and the measure was defeated at the November election. Proposed revisions of these four chapters were made public in the spring of 1955 but were not put on the ballot. The present versions differ from both the 1964 and the earlier 1966 versions.

Thus, all of the chapter revisions now proposed have, in substance, been the subject of previous research reports, and have previously been defeated by the voters. However, substantial changes have been made since the previous presentations. Much of the proposed Chapter VI is new material and was first made available to your Committee on August 18, 1966. The complete text of the five chapters as presented to this Committee fills forty-seven closely typewritten pages.

⁽¹⁾ City Club Bulletin, Vol. 41, No. 21, October 21, 1960, pages 161-163.

III. RESEARCH AND INVESTIGATION

The primary task of this Committee was to compare the proposed revisions with the present Charter, to study the implications of the changes proposed and to form judgments on the desirability of and potential dangers presented by such changes. In addition, this Committee analyzed all sections criticized by the committee in 1964, to see if the objectionable features had been modified or corrected. This Committee did not deem it its function to point out additional changes which might have been made in the Charter. This is particularly true for Chapter VI. A City Club study in 1965⁽²⁾ reported in some detail the operations of the Port of Portland and the Commission of Public Docks. This Committee felt it beyond the scope of its assignment to decide if this charter revision was the proper method to deal with the possible conflicts of having two agencies involved in the management and operation of Portland Harbor.

Following analysis of the proposed revisions within the Committee, the members met with the following people:

Miss Marion Rushing, Chief Deputy City Attorney.

Mr. Thomas Guerin, Manager, Commission of Public Docks.

Mr. Wayne Cordes, Attorney, legal counsel, Commission of Public Docks.

Mr. Thomas White, Attorney, legal counsel, Commission of Public Docks.

Mr. George Baldwin, Manager, The Port of Portland.

Mr. Lofton Tatum, Attorney, legal counsel, The Port of Portland.

In all cases, those interviewed were cooperative and very willing to help the Committee in its investigation and study.

IV. GENERAL COMMENTS AND CRITICISM

In reviewing the proposed revisions, the Committee found several important items that warrant close attention. These items, along with numerous other items, are discussed in Section V of this report, "Detailed Analysis." They are the following:

Section 6-103, Subsection (f)—Commission of Public Docks' control of waterfront development.

Section 6-103, Subsection (p)—Commission of Public Docks' authority to mortgage property.

Chapter IX; Articles 5-8—Local Improvements, Assessments and Collections (Sec V, B, 5 of this report)

Section 12-201—Revenue Bonds.

It is believed that these proposed revisions have potential or actual harmful effects which override the improvement in other sections of the Charter. Furthermore, this Committee found other instances where well-founded City Club suggestions were ignored in the rewriting of Chapters IX, XI, XII and XIII.

In addition to these specific objections, your Committee concurs with the 1964 Committee's criticism of the manner in which the measure was prepared and referred to the voters. As was the case in 1962 and 1964, the proposed revisions were written by the City Attorney's office, then reviewed by other city officials and finally adopted by the Council and referred to the voters only 90 days before the election. As nearly as this Committee can determine, no civic, business, labor, news, or other group was consulted, nor were the drafts made available outside of the city government prior to adoption. This Committee is particularly distressed because the criticism of this procedure, made in the City Club reports of 1962 and 1964, was ignored. The Committee feels strongly that any proposed revision of the Charter should be drafted with the active participation of interested groups of citizens whose viewpoint is not, through association and habit, oriented toward the administration of the City. Then, the proposed revision should be made available to the public well in advance of election day and before its terms are irrevocably fixed. This would provide a reasonable opportunity for study, criticism and, if necessary or desirable, change.

(2) City Club Bulletin, Vol. 45, No. 46, April 16, 1965, pages 203-245.

The Committee believes that the Charter is in need of revision. This is particularly true of Chapter VI, Commission of Public Docks. It is believed that neither the City nor the Commission of Public Docks was intentionally seeking, nor do they require, the broad powers the Committee found implied in Section 6-103, subsections (a), (f) and (p). Citizen participation in the drafting of Chapter VI probably could have eliminated the objectionable provisions and focused public attention on the good and necessary aspects of revised Chapter VI.

The Committee further believes that chapters of the charter as different and unrelated as Chapters VI and IX should not be placed on the ballot under a single ballot title, forcing the electorate to accept or reject the entire "package." The Committee envisions cases of bad revisions being passed, or dragging good revisions down to defeat. When chapters are substantially unrelated, they should be placed on the ballot separately.

V. DETAILED ANALYSIS

A. CHAPTER VI—COMMISSION OF PUBLIC DOCKS

Much of Chapter VI is clearly out of date. The Commission of Public Docks (hereinafter called "CPD") does not appear to be specifically hindered by these out-of-date provisions. However, it is possible to imagine circumstances whereby these could interfere with operations. A complete enumeration of changes would require recitation of the entire revised charter and would serve no useful purpose. However, the following sections appear to be worthy of comment.

1. Commission of Public Docks (6-102)⁽³⁾

The new wording clarifies the length of term for commission members and establishes methods for electing officers.

2. Powers and Duties (6-103)

a. Subsections (a) and (b):

Existing subsection (a) empowers the CPD to develop a plan for the City's harbor front, providing for wharves and docks necessary for the accommodation and handling of watercraft. Under existing subsection (b) the CPD is responsible for providing publicly-owned docks. These provisions are broadened in the revision to include planning for "commercial and industrial activities related to or which promote commerce or shipping . . . and to authorize the acquisition and operation of needed facilities therefore . . . in such places inside or outside the City as the Commission may deem desirable or necessary." To some extent this broadened authority reflects (1) the actual operations of the CPD in providing other facilities, (2) the existence of facilities outside the City (portions of Terminal 4), and (3) the possible future need to expand outside the City when Rivergate requires public docking facilities. The powers granted in these subsections may be available in the existing charter; the revised wording clarifies the point. The Committee was advised that the CPD does not contemplate a move into industrial development activities. However, subsections (a) and (b), when read together, apparently authorize it to do so. In addition, increased authority under subsections (a) and (b) must be related to the increased authority granted the CPD under revised subsection (f), hereinafter discussed, to discover the full import thereof.

b. Subsection (e):

Old subsection (e) describes powers of the CPD and in so doing provides "that the grant of power herein contained shall in no wise limit, modify or restrict the powers conferred upon and exercised by the municipal corporation known as the Port of Portland, by its charter and several amendments thereto." New subsection (e) eliminates the above wording and adds, among other phrases, the following:

"The powers conferred unto the city by the statutes of Oregon with relation to improvement and use of navigable streams . . . are hereby

⁽³⁾ Unless otherwise stated, numerical references are to sections of the proposed revision. The first digit identifies chapter, the second identifies article, and the last two identify section. Thus, "6-102" refers to Chapter 6, Article 1, Section 02 of the proposed revision.

vested in the said commission. The authority of the commission under this article, however, shall not extend to harbor regulations applicable to movement of water crafts, nor to matters affecting the waters of rivers and streams within the city . . ."

Reference is apparently to ORS Chapter 780 granting municipalities the power to regulate wharf construction beyond the low water mark. The explanation offered by the City Attorney's office is that the old wording is inappropriate because overlaps of function would be governed by state statute. The stated intention of the new wording is that such powers granted to the City by the State are vested in the CPD, not the City Council.

c. Subsection (f)

New subsection (f) replaces subsection (g) of the existing Charter. This Committee is very concerned about the new wording. Existing subsection (g) provides in part that the CPD "shall have power to make rules and regulations for the carrying out of plans for the building, rebuilding, repair, alteration and maintenance of structures upon or adjacent to the waterfront", and requires a permit from the Commission in connection with new structures and repairs upon or along said waterfront. Proposed subsection (f) adds:

" . . . The approval of the Commission for construction or repairs shall be limited to consideration of location, type of structure and whether the same will conform to its plans for harbor development and general rules and regulations. Such approval shall be in addition to any other permit or approval required by law and compliance with city building or other codes or regulations required, notwithstanding such Commission approval. The Commission shall have authority to regulate and control uses of private property along the waterfront to enforce compliance with its plan or plans as described in subsection (a) herein."

It is the opinion of this Committee that subsection (f) vests the CPD with general zoning control over all development of all waterfront property. Although it might be inferred that this power now exists under existing subsection (g), it has been used not as a zoning regulation but as a building permit regulation. One of the stated objectives of the revised provision was specifically to authorize the transfer of some of the building permit functions to other city agencies to avoid duplication. This is obviously meritorious.

However, this Committee is concerned about the establishment of authority to zone the waterfront and adjacent area, with no provisions stating how this authority will correspond to, conflict with, or supersede city authority for zoning. Furthermore, since its zoning authority specifically extends to the now broader range of activities enumerated in subsection (a), the CPD's sphere of control would be substantially broadened, and its zoning authority could be construed to include a wide variety of activities. This Committee envisions cases of conflict between the planning commission and the CPD, for instance, over the development of waterfront property. Also, as a major landholder of waterfront property which might have facilities competing with private or other publicly-owned facilities, it is questionable whether this zoning authority should be given to the CPD. Many zoning requests brought before the CPD could present it with a potential conflict of interest. These matters of concern are compounded in this instance, in that there are no procedures established for notification, appeal or remonstrances with respect to the CPD's overall plan for development of the harbor and adjacent property, nor are there any such provisions with respect to specific zoning decisions.

d. Subsection (g):

New subsection (g) replaces old subsection (f) and appears to be intended to bring the purchase practices of the CPD in line with city practices which were updated in charter changes made (over the objections of the City Club) in November, 1962. This wording gives the CPD more latitude in purchasing than is allowed under federal purchase procedures. The objections of the October, 1962 City Club report are still valid. In brief they are:

(1) The revision eliminates the requirement that bids be awarded to the lowest responsible bidder.

(2) The revision permits the CPD to accept bids which do not conform to the invitation to bid.

(3) The revision permits considerable latitude in abandoning competitive bidding procedures.

While this Committee finds merit in these objections, it recognizes that there is some advantage in having uniform purchase procedures used by the City and the CPD. It is believed that the liberal purchase standards have worked without scandal for the City since 1962 and in the hands of Commissioners committed to competitive purchase procedures, it could operate satisfactorily.

e. Subsection (k):

Subsection (k) replaces subsection (j) in the present Charter, which provides "all permanent officers and employees of the Commission, except consulting or technical employees, and employees engaged in construction shall be subject in respect of their appointment and removal to the civil service rules of the City of Portland." Under new subsection (k), "Officers and employees of the Commission shall be exempt and excluded from the civil service provisions of the charter." Present practice is in line with proposed charter revision.

This proposal is similar to that in charter revisions on the ballot in November, 1960. This change was endorsed by the City Club in 1960, but the revision was defeated in the election. The attitude of the City Attorney's office is that because many of the employees are daily hire workers (i.e., longshoremen), and because about one-half of its permanent staff is represented by craft unions (i.e., carpenters, electricians, etc.), the civil service provisions would benefit only a small number of employees (i.e., administrative, clerical, and security personnel). Their conclusion is that all employees should be inside or outside the civil service and that it is simpler to have all employees outside the civil service.

Because there appears to be no opposition to this proposal, it is concluded that the present system (which is contrary to the existing Charter) operates satisfactorily. However, it is believed the CPD should re-examine its operations to see if it might not benefit by having at least part of its staff under civil service.

A number of new subsections have been added to Chapter VI. These are briefly described below:

f. Subsection (j):

Except for matters relating to tariff and terminal charges and the management of publicly-owned terminal facilities, the City and the CPD may, by concurrent resolution, provide that powers granted to the CPD can be exercised by the City.

g. Subsection (n):

CPD can solicit and promote trade and operate offices inside and outside the City.

h. Subsection (o):

CPD can enter into contracts with other governmental units to provide services or facilities within the scope of its duties.

i. Subsection (p):

CPD can borrow money, execute notes and mortgages, enter into conditional sales or purchase contracts and lease purchase agreements. Your Committee has not had time to research this paragraph thoroughly. However, it appears that this paragraph gives the CPD unlimited and unrestricted power to borrow money on notes and to mortgage its property. The mortgaging provision appears unusual and would apparently give the CPD authority to mortgage previously constructed and owned facilities in order to purchase or construct additional facilities. Neither the City of Portland nor the Port of Portland has this authority. The Committee was not advised of any reason necessitating such a broad grant of authority to the

CPD. The propriety of an unrestricted power to mortgage is questionable, and the opportunities for abuse seem to outweigh any potential benefit to be derived from the provision.

j. Subsection (q):

CPD may obtain advice and assistance of city staff and pay for same. This shall not prevent hiring of technical assistants and counsel.

k. Subsection (r):

CPD shall have authority to establish funds, contingent funds, and transfer money from one to another.

l. Subsection (s):

CPD may incur expenses and spend money for purposes set forth in the Charter and for administration and operation of any facilities or functions of the Commission as the Commission finds necessary or convenient.

m. Subsection (t):

Except for matters of legislation, general policy or general regulation, the Commission may delegate to employees or agents any function or duty not specifically required to be performed by the Commission.

B. CHAPTER IX: LOCAL IMPROVEMENTS, ASSESSMENTS, COLLECTIONS

Chapter IX deals with establishing and financing a "local" improvement; that is, and improvement which is of special benefit to a particular area and is assessed to property owners within that area. Thus, it is concerned with sewers, street improvements, street grades, elimination of grade crossings and miscellaneous other local improvements. The Chapter provides for condemnation of property, measuring damages of and assessing benefits to property owners and procedures relating to these functions, including notice to property owners, hearing, review of objections, appeals and bonding.

Following are specific comments on the proposed revision of Chapter IX:

1. Article 1—General Provisions

a. Definition of "Sewer" (9-102)

The 1964 study noted that the definition of sewer was broadened to include "widening, deepening, straightening and diverting channels of streams, improving waterfronts, filling or grading lakes, ponds or other waters . . . and other acts and things found necessary or appropriate for sewerage, drainage and proper disposal thereof." Because Section 9-601 gives the Council power to overrule any and all remonstrances and assess the total cost of sewer improvements to the property benefited, this broadened definition is of some significance.

b. Costs of Improvements (9-104)

This Section eliminates prior limits on the amounts that may be added to the cost of local improvements for engineering and superintendence. It further allows inclusion of costs for "special preliminary services or studies if those costs have been included in the estimate of the city engineer prior to the construction contract."

c. Progress Payment (9-105)

The Section has been reworded to correct deficiencies noted in the City Club report of 1964.

2. Article 2—Street Grades

a. Definition of "Change of Established Grade" (9-202)

Article 2 specifies assessment notice and hearing procedures for changes of street grade. Unlike existing Section 9-202, which refers only to "change of grade," proposed Section 9-202 adds a sentence stating that a variation of one foot or less above or below an established grade shall not constitute a change of

established grade. It therefore removes from the notice and other procedural requirements of Sections 9-203, 9-204, 9-205 and 9-206 typical repaving of streets, where the thickness of the added pavement is less than one foot.

b. Objections, Claims for Damages (9-205)

As noted by the City Club study in 1964, the existing Charter would allow the Council to award damages to a property owner adversely affected by a change in street grade, even if the owner failed to present his claim in the time and manner prescribed by the Charter. Proposed 9-205 would not allow payment under these circumstances.

3. Article 3—Condemnation Proceedings

Article 3 formerly related to condemnation and assessment procedures in connection with laying out, extending and widening streets. These procedures are now broadened to include substantially all cases in which the City intends to take less than a full fee simple title. The proposed changes are the same as studied by the 1964 City Club Charter Revision Committee. That committee's report found no substantial objection to making the procedure generally available, although certain specific shortcomings in the revision were noted. The currently proposed Article 3 is the same as proposed in 1964 except as hereinafter discussed.

a. Hearings, Awards and Assessments (9-304)

The criticism in the City Club report in 1964 is still valid. The City Council, after holding a supplemental hearing, can award less damages or assess greater benefits than the engineers' proposal, without first advising the owner of its intention.

b. Appeals (9-305)

The 1964 report noted that the revision then proposed failed ". . . to provide any compensation to an owner for the costs the owner may incur in connection with the determination of the condemnation award, even when the owner established that the amount first offered by the city was insufficient." The new revision provides that any person having an interest or lien upon the property intended "to be appropriated or assessed" may appeal to the Circuit Court from the ordinance making an award of damages and assessment of benefits, and if the judgment on appeal provides a larger sum in damages for an "appropriation" than awarded appellant in the ordinance, appellant may recover his costs on appeal and reasonable attorney's fees. The change is obviously an improvement. Nevertheless, it must be noted that an appellant from an improper "assessment" of benefits is denied that same relief on appeal, although there is no apparent reason for the difference in relief.

c. Failure of Proceedings (9-308)

The City Club study in 1964 was particularly critical of this proposed revision because assesment of benefits could be postponed indefinitely by inclusion in a subsequent improvement. Proposed 9-308 sets a time limit on this. Proceedings for the subsequent improvement must be started one year after the time limit for appeal.

d. Abandonment of Proceedings (9-309)

The 1964 study was critical of wording that allowed the City to abandon proceedings at any time and not provide compensation to the property owner for loss suffered. Proposed 9-309 modifies this to read that in cases where an alternative procedure is to be followed, the Council may terminate proceedings at any time prior to determination of the award of damages.

4. Article 4—Elimination of Grade Crossings

The 1964 City Club Report found the changes in Article 4 unobjectionable. With one exception, the additional changes made since 1964 are also unobjectionable: Section 9-403 now provides that the city engineer shall confer with the engineer of the interested railroad company for the purpose of determining a reasonable plan and method for eliminating the grade crossing, but if the railroad

engineer "shall neglect" to confer with the city engineer after ten days' written notice, the city engineer shall proceed with preparation of the plans without a conference. The proposed revision substitutes "does not" for "shall neglect to," thereby placing the railroad engineer in default even though the failure to confer during the ten days may not result from his "neglect," as where the city engineer is unavailable. This change appears unwarranted.

5. "Charter Ordinances"

Articles 5, 6, 7 and 8 of Chapter IX dealing, respectively, with streets, sewer and other improvements, assessments and collection, are largely based upon the "local improvement code" portions of the Public Works Code (PWC). Similarly, Article I of Chapter XI, dealing with water works, is largely taken from the Water Code. These provisions were taken from the 1903 Charter and relegated to the status of "charter ordinances" by charter revisions in 1913 and 1928. As charter ordinances, these provisions are subject to amendment by the Council after satisfaction of prescribed notice and hearing requirements (set forth in existing Section 12-104). Since most of these provisions deal with the rights of citizens, your Committee agrees that it is in keeping with the present detail of the Charter to restore them to the sanctity of the Charter.

In making this re-inclusion of material, however, the revision abandons the previous practice of spelling out procedural steps for local improvements in the Charter and charter ordinances, and authorizes the City Council to establish them by regular ordinance. Such authority is new to the Charter. While it is recognized that this is one acceptable method of establishing procedures, to abandon prior practice is neither consistent with the remainder of Chapter IX nor with the composition of the Charter to this date. It is the opinion of this Committee that any simplification or brevity gained by this basic change is outweighed by the difficulties it might create. It denudes the Charter of basic standards by which local improvement procedures may be judged and places property owners in the undesirable position of having to litigate untried procedures. This Committee is confident that procedural provisions in connection with these and other articles can be included without significantly increasing the length of the Charter.

The particular sections where ordinance power is substituted for detailed procedures are the following (discussed in detail below):

- 9-502, 9-503 and 9-505 (street improvements);
- 9-507 (sidewalk improvements);
- 9-601 (sewer improvements);
- 9-701 and 9-703 (other improvements);
- 9-802 (assessments for local improvements);
- 9-809 (deficit assessments for local improvements); and
- 9-811 (reassessments for local improvements).

In addition, existing Section 12-104 would be deleted altogether by the revision of Chapter XII. This provision, enacted in 1913, states that the local improvement code "must" provide for the giving of ten days notice by publication or mail (a) of the intention to make an improvement and (b) of any proposed assessment against property owners, and that the right "shall" be preserved to owners of 60% in extent of the property affected by any assessment for a local improvement, except for street opening or sewers, to "defeat" the same by remonstrance. Because substantially all improvements covered by Articles 5, 6, 7 and 8 are derived from the "local improvement code," deletion of Section 12-104 eliminates a basic charter protection to property owners.

Property owners probably would be adequately protected if the City Council should choose to adopt the present provisions of the PWC (which is not affected by the proposed charter revision), as its procedural ordinance. However, it is not required to do so.

Proposed Section 13-103, a new provision, states that when a charter provision is to be implemented by general ordinance: (1) lack of a general procedural ordinance does not prevent an improvement, work or act, or impair the validity of the proceedings; (2) the Council may "by resolution or ordinance" approve procedures

followed, and (3) a subsequent general ordinance need not follow the same procedure. This section would allow the Council to adopt a different procedure for nearly every improvement covered in Chapter IX.

Moreover, procedures actually used in connection with local improvement assessments, deficit assessments and reassessments, or collection thereof, would be aided by certain "bootstrap" provisions: 9-808 (failure to mail, mistake in mailing, or mitake in notice does not invalidate proceedings when notice is published or posted); and 9-814 (disputable presumption that proceedings are regular); and 9-816 (statutory procedures may be used in lieu of charter procedures). To the extent these provisions are used to justify procedures which do not give property owners adequate notice or opportunity to be heard concerning a proposed assessment, they are undesirable.

The net effect of these changes gives the City Council broad powers to prescribe and validate procedures for local improvements, without reference to the voters (except as referred to the voters by the council or by petition of 10% of the voters). Objections in addition to the general objections noted above are set forth in the comments concerning the affected sections.

a. Article 5—Streets and Street Improvements

Sections 9-502, "Improvement Procedure," and 9-505, "Completion of Work; Spread of Assessments," confer power on the Council to prescribe "by ordinance" procedures for street improvements. These sections do not include the following notice requirements contained in the PWC sections from which they are derived: notice of proposed improvement by ten publications and by posting (PWC 5-322); notice of proposed assessment by five publications and by mail (PWC 5-330); and notice of declared improvement by five publications and by mail (PWC 5-334). Proposed Section 9-507 "Sidewalk Improvements and Repairs; Duties of Owners," derived from PWC 5-309, deletes the form of notice to be posted by the city engineer, deletes requirements for the city engineer to file affidavit of posting with the city auditor, and deletes the requirement that the auditor mail a copy of the notice to the owner of the affected property. PWC 5-310 requires the city to make repairs if the owner, after notice, does not. Proposed 9-507 would permit but not require the city to do so.

The lack of an established procedure for street improvements is aggravated by the provision in Article 7 (9-703) that street improvement procedure is to be followed in connection with all other local improvements.

b. Article 6—Sewer Improvement

Proposed Section 9-601 "Assessment District; Remonstrances" replaces PWC 5-315, 316 and 317. The proposed section requires publication of notice of the Council's intention but deletes provisions on methods of doing so. In addition, it eliminates the requirement that notice be posted along the line of the contemplated sewer.

c. Article 7—"Other Improvements"

Proposed Section 9-701, "Fire Stops," provides "The council shall take proceedings similar to those required for constructing sewers." Section 9-601 (sewers) states that these procedures shall be prescribed by ordinance. Section 9-701 continues, "The method of making and collecting assessments shall be the same as for other local improvements." Section 9-703, "Other Local Improvements," provides that in the levy and collection of local assessments on the property benefited, the procedure for street improvements will be followed. These procedures under Section 9-502 are to be fixed by ordinance. Thus, after referring to three other sections of the Charter, the reader finds that procedures are to be set by ordinance.

Proposed Section 9-703, "Other Local Improvements," states that procedures for street improvements "shall" be followed, and that "the Council may overrule any and all remonstrances" if it determines that the public health or safety demands immediate construction. The power to overrule any and all remonstrances is directly in conflict with the procedures for street improvements in proposed Section 9-503, which bars further proceedings for a period of six months upon

written objections of the owners of three-fifths or more in area of the property within the proposed assessment district. In addition, the power to overrule remonstrances for all other local improvements is particularly significant in that the proposed charter revision eliminates Section 12-104, which provides in part "the right shall be preserved to the owners of sixty per centum in extent of the property affected by any assessment for a local improvement except for street opening or sewers to defeat the same by remonstrance." The proposed revision thus substantially weakens the ability of property owners effectively to object to assessment proceedings.

d. Article 8—Assessments and Collections

Proposed Article 8 apparently attempts to prescribe uniform rules governing assessments for all local improvements. The intention is laudable because the charter, charter ordinances and other ordinances detail the procedures for each type of local improvement. Not only are existing sections lengthy, but many which overlap are not consistent. As stated above, however, this Committee believes that the revision goes too far in deleting existing procedural safeguards for property owners.

(1) Procedures for Assessment (9-802)

The first sentence of this section provides that the City Council "shall" by ordinance, establish necessary procedures concerning proposals for assessment, notice to property owners, hearing of objections, acceptance of work completed, and assessment of property according to benefit conferred. The remaining three sentences provide that an assessment shall not exceed either apportioned share of cost or benefit, that benefit is deemed to be the full assessment levied on the property, and that defects in notice, entry of assessment and related matters may be corrected by subsequent action.

These four sentences cover, in general terms, six sections of the 1964 version (9-802 through 9-807). The latter, which filled two single-spaced mimeographed pages, were shortened versions of Sections 5-330 through 5-335 of the existing Public Works Code.

The criticisms noted above concerning deletion of notice and remonstrance provisions (see discussion of 9-502, 9-505 and 9-703 above) apply here.

In addition, it should be noted that ORS Chapter 223 prescribes rules which may be followed for local improvement assessments and reassessments. ORS 223.389, enacted in 1959, prescribes assessment procedures for local improvements "to the extent that the city charter does not prescribe the method of procedure," provided such local improvements are permitted by law and are not prohibited by percentage of remonstrances or otherwise (ORS 223.399). Because proposed Section 9-802 does not itself prescribe procedures, but delegates that function to the City Council, it can be argued both that ORS 223.389 applies and does not apply. To the extent that ORS 223.389 permits notice of a proposed improvement to be given solely by posting ("Notice may be made by posting, by newspaper, publication or by mail, or by any combination of such methods"), it gives less protection to property owners than Section 12-104, which requires such notice to be by publication or by mail. But ORS 223.289 gives greater protection with respect to notice of a proposed assessment, i.e., by mail or personal delivery, as distinguished from publication or mail under Section 12-104. Unlike Section 12-104, Chapter 223 of ORS does not guarantee that a remonstrance will block an assessment proceeding. Whatever the merits of ORS 223.389, it is subject to change by a body other than the legal voters of the City of Portland.

Your Committee was advised that the City gives notice of a proposed assessment in three ways—mail, publication and posting. Use of all three methods is desirable. Property owners, however, should be assured by charter provision that such practice is continued. If Section 9-802 is approved, the City Council will be free to change procedures at will, e.g., to provide only one method of giving notice after work is completed. Nothing in the proposed charter revision would protect property owners from abuse of this power.

(2) Redemption (9-805)

In providing the period in which property sold for nonpayment of a lien may be redeemed, the proposed section differs from its source, PWC 5-346, in permitting the redemption period to be reduced, by ordinance, from a fixed three years to a period of one to three years. The explanation received for this change was that in periods of comparative economic prosperity, three years is too long a time to allow for redemption.

(3) Reassessment (9-811)

This section, taken from PWC 5-353, permits the Council to make a reassessment whenever the original assessment has been set aside or invalidated for any reason. The existing provision states that the reassessment cannot exceed the amount of the original assessment. This limitation has been omitted from the revision for the stated purpose of harmonizing the Charter with the applicable state statute. ORS 223.415 provides expressly that the "amount of the reassessment shall not be limited to the amount of the original assessment," so the explanation given seems valid.

The 1966 version adds to the definition of "reassessment" a "new assessment on property not previously assessed for a local improvement." This goes beyond ORS 223.415, which states that "the property embraced in the reassessment shall be limited to the property embraced in the original assessment." While it may be desirable to have new property included in the reassessment, the owner of such property is not guaranteed the same notice and opportunity to be heard for an original assessment:

"The proceedings required before making the original assessment shall not be required for reassessments under this section. Reassessment procedure shall be established by ordinance."

The new language thus gives the City a means to make an original assessment without observing even its own procedural requirements therefor. Furthermore, this section leaves procedures to the City Council and therefore is subject to the criticisms detailed with reference to 9-802, above (ORS 233.435 requires notice of proposed reassessment by mail or personal delivery).

(4) Appeal (9-813)

This proposed section, a substantially revised version of PWC 5-354, provides that a person who has filed an objection to an assessment, deficit assessment, or reassessment which has not been satisfied by the Council may "appeal" to the Circuit Court "to the extent permitted by statute."

The Legislature has repealed all provisions authorizing an "appeal" from an original assessment (ORS 223.397, repealed 1963) and a reassessment (ORS 223.460, repealed 1965) for local improvements and in 1965 enacted provisions which allow owners to use a writ of review to test the validity of assessments (ORS 223.401) and reassessments (ORS 223.462). A writ of review is a procedure separate and distinct from an appeal and tests the legal sufficiency of an inferior tribunal's "judicial functions" on the narrow grounds of erroneous or arbitrary exercise, or lack of jurisdiction (ORS 34.040). The reviewing court (i.e., the Circuit Court) cannot try issues of fact, as it could have under former "appeal" procedures (see ORS 223.397 and 223.470, now repealed). For example, the former procedure permitted a jury to determine whether property was benefited to the extent of an improvement; now a court may only decide whether the City Council, in making the same determination, acted erroneously or arbitrarily, or without jurisdiction.

To the extent proposed Section 9-813 refers to "local improvements," it is meaningless. It cannot confer a broader right of "appeal," because the City is without power to confer jurisdiction upon state courts. It cannot, under current Supreme Court decisions, bar the statutory right to a writ of review. (See *Boyle v. City of Bend* (1963) 234 Or. 91,98 and *City of Woodburn v. State Tax Commission* (1966) 82 Or. Adv. 535.) It is not necessary for municipal condemnation, for which a right of appeal exists under ORS 223.120, because proposed Section 9-305 already provides for "appeal." It is unclear whether its scope includes sewer improvements, assessments for which are appealable under ORS 224.060.

Lack of a broader right of appeal for property owners is a compelling reason why the Charter should clearly specify the procedures to be observed during the assessment process. As previously noted, the proposed charter revision consistently leaves formulation of such procedures to the City Council.

6. Article 9—Financing Local Improvements

These proposed sections are substantially the same as existing Charter provisions. The 1964 City Club Report found the changes to be “of a housekeeping nature and seem generally desirable.” Two changes are worthy of mention: (1) proposed Section 9-903 provides no fixed period during which improvement bonds cannot be called, whereas the 1964 version continued the requirement of existing Section 9-701 that such bonds be called no earlier than three years after date of issue; and (2) proposed Section 9-904 reduces from 5 per cent to 3 per cent the penalty on delinquent installments paid prior to sale of the property for collection of assessment.

C. CHAPTER XI: SPECIAL SERVICES

Proposed Chapter XI would omit certain obsolete bonding provisions covering ratification of prior issues (Section 11-102), refund water bonds (Section 11-202) and municipal auditorium bonds (Section 11-301). Provisions concerning the public auditorium commission (also Section 11-301), which we understand has not operated for many years, are also deleted. This Chapter also would add Charter provisions taken from the present Water Code, with changes of an acceptable housekeeping nature.

Proposed Section 11-201 gives the functions of the old public auditorium commission to the Council with power to delegate the same to a commission established by Charter or ordinances. Section 11-201 also provides, as is true at present, that auditorium employees are not subject to civil service requirements.

D. CHAPTER XII: PUBLIC FACILITIES AND WORKS

1. Elimination of Existing Section 12-104

As previously pointed out, the revision of Chapter XII would eliminate existing Section 12-104, which relates to changes in the “local improvement code” provisions taken from the 1903 Charter. Elimination of the costly advertising and printing requirements of Section 12-104, which have deterred changes in the 1903 language, appears desirable. Elimination of minimum notice requirements or remonstrance rights, both of which directly affect property owners, is not desirable. The drafters’ solution of leaving these matters to the City Council is not in keeping with the Charter as it has existed to date and poses a serious threat to property owners. Elimination of other sections in Chapter XII is not objectionable.

2. Recreational Areas (12-101 to 12-103)

Proposed Sections 12-101 to 12-103 govern the acquisition, maintenance and administration of recreational areas and bring up to date archaic provisions of Sections 9-603 and 9-605. The authority to be given to the Council over recreational areas appears necessary and not subject to abuse.

3. Revenue Bonds (12-201)

Proposed Section 12-201 governing financing of revenue-producing facilities makes important substantive changes in existing Section 10-104, but without amending or deleting the latter. These changes will allow revenue bonds to be issued to finance revenue-producing facilities located inside or outside the City, rather than—as at present—only inside the City. The 1966 version adds “utility plant or property used or useful in connection with operation within the City.” While the City now intends to use this provision to finance Progress Golf Course and certain marinas, the new language is not necessary for those facilities and suggests that the City might have in mind the possibility of acquiring utility properties, such as electrical light and power plants, etc.

Under the new section, such bonds may be secured not only by a pledge of revenues from the facility but also by the pledge of “any revenues from similar

facilities." Though the City intends, for example, to support the Progress Golf Course with revenues from other golf courses, and interprets the words "similar facilities" in this narrow fashion, in context, the term could mean any other revenue-producing facility of the City. If so construed, the City could finance a city facility not expected to produce any net revenues without going to the electorate to obtain an authorization for general obligation bonds.

Under Section 10-104, revenue ordinances are subject to referendum upon petition of 2,000 voters (Section 10-208). Bond ordinances under proposed Section 12-201 would be subject to referendum only upon petition of 10 per cent of the voters (Sections 2-123 and 3-201; ORS 254.140)—an increase of more than 10,000 signatures.

4. Article 3—Performance of Public Works

a. Contract or Direct Labor on Public Works (12-301)

This section was proposed in order to make it clear that the City may employ labor directly on public works and improvements and to clear up an ambiguity in this regard which the City finds in existing Section 8-105, as revised six years ago. Your Committee does not feel that such an ambiguity exists, since Section 8-105 provides, in dealing with bidding requirements, that "this provision shall not prevent the Council from employing labor direct to construct or carry on public works or to make public improvements." The specific powers of the City, as set forth in charter Section 2-105 (a) (5), include the power to construct public facilities. These two provisions considered together would appear sufficient to permit the direct employment of labor to construct a public facility.

Moreover, proposed Section 12-301 would also provide that "the Council may enter into contracts as it finds in the public interest for the . . . construction . . . [etc.] . . . of any public work [or] improvement . . ." This would not appear to require the City to advertise for bids of such a contract, but present Section 8-105, in dealing with the identical subject, apparently does require such bids. It is confusing to have two sections dealing with the same subject use different terms and appear in separate chapters of the Charter. Also, in case of conflict, it would result in the more recent provision controlling its predecessor, which in this case would be most undesirable.

b. Production of Materials (12-302)

For years the City has operated a paving plant without express Charter authority. This proposed section makes such authority explicit. Your Committee feels this is a proper and desirable change.

E. CHAPTER XIII: CHARTER REVISION AND CONSTRUCTION

Chapter XIII is entirely new and deals with the effect of repeal, amendment and substitution of Charter provisions (13-101), the continuance of original Charter provisions as ordinances (13-102), procedural ordinances (13-103) and construction and interpretation of the Charter (13-201 and 13-202). The present Chapter XIII deals only with daylight saving time and is obsolete by reason of state statute.

1. Article 1—Repeals, Amendments and Reenactments

a. Effect of Repeal, Amendment and Substitution (13-101)

This proposed section provides that when a particular grant of authority contained in the Charter is repealed, expressly or by implication, unless the repealer specifically forbids it, the City will be empowered to continue any project or program under the former grant of authority if the City has contracted with another person in that regard, or if the City has begun the program, and termination would entail the risk of liability and damages, "or if the Council finds that third persons have materially changed their position in reliance upon Council action" under the repealed authority. While this section may be appropriate to a limited extent, your Committee questions the phrase quoted above as it may be applied to permit the City Council to continue practically any program it wishes. Your Committee feels that sufficient protection against costly uncompleted projects is provided by permitting completion of projects which entail the risk of liability and damages if not completed.

2. Article 2—Construction and Interpretation

a. Restrictions and Limitations (13-201)

This proposed section provides that the City's powers are limited only if that limitation is express, that the specification of procedures in the Charter (or in statutes) shall not exclude other procedures unless the specified procedure is expressly stated to be exclusive, and that the City shall have all necessary or convenient powers to carry out its general or special authority. The 1964 Committee was informed that the primary purpose of this proposed section is to permit the City to do anything permitted by statute, even if contrary to the Charter, unless expressly forbidden by the Charter.

This Committee reiterates the 1964 Committee's concern that Charter provisions, which are enacted by the legal voters of Portland, may be circumvented by Council ordinances passed pursuant to state implementing statutes, which are enacted by legislators from the entire state. State statutes clearly pre-empt local charters and ordinances where they deal with matters of general concern to the state, such as provisions for judicial review of assessment procedures or the wording of local tax measures on a ballot, but their effect in areas of purely local concern, such as the amount of a tax levy or how it shall be used, is open to question. (See *Boyle v. City of Bend*, 234 Or. 91,98).

Furthermore, a second balancing of interests should occur as between the City Council and the legal voters. Matters of vital concern to property owners, such as basic assessment procedures, have been and should continue to be set forth in the Charter, and not circumvented by ordinance. Matters not directly affecting property owners, such as supervision of construction of improvements, are better left to the City Council.

b. Intent of Reinclusion of Former Charter Provisions (13-202)

This provision continues the charter status of provisions originating in the Charter, then removed and continued as ordinances, and finally reincluded in the Charter (e.g., the "local improvement code," Articles 5, 6, 7 and 8 of proposed Chapter IX), provided they are reincluded without "substantive" change. The 1964 version read "substantial" change. Your Committee was told that the former was selected because it excludes "procedural" changes.

Not only is this distinction of doubtful analytical value, for procedures can create rights and thereby become substantive, but its apparent purpose to give continuous charter status to such objectionably modified procedural sections as 9-202, 9-502, 9-703, 9-802 and 9-811 is itself objectionable. The term "substantial" invites objective evaluation of both the old and new language, and hence is preferable.

VI. SUMMARY AND CONCLUSIONS

The City Charter needs revision. Much of it is archaic and confusing, and it is difficult to determine the rules governing any particular matter from the maze of interrelated and sometimes conflicting Charter, ordinance and statutory provisions. While it cannot be said that this archaic Charter has severely interfered with the operations of the City, its agencies and commissions, it can be concluded that both the City administration and citizens dealing with the City would benefit from a revision of the Charter. The revised Charter should, in a concise, consistent, orderly and unambiguous way, define and limit the powers with which the municipal authorities are entrusted and provide the manner in which these powers shall be exercised. In the opinion of this Committee, the proposed revision does not accomplish these objectives.

This Committee believes that most of the proposed revisions are somewhat better than existing provisions. However, as mentioned in Section IV of this report (General Comments and Criticism) and elaborated in Section V (Detailed Analysis), some of the proposed revisions are clearly undesirable. Several of these changes give to the City, or to the Commission of Public Docks, ill-defined powers under which possibilities for abuse or confusion outweigh the advantages of conferring these expanded powers.

For example:

(1) Subsection 6-103 (f) appears to give the Commission of Public Docks a general zoning control over all development of waterfront property in the City without defining how this control corresponds to, conflicts with or supersedes City authority for zoning.

(2) Subsection 6-103 (p) gives the Commission of Public Docks unlimited and unrestricted power to borrow money on notes and mortgages. The provision allowing mortgaging of previously owned property is questionable and the opportunity for abuse outweighs any potential benefit of the provision.

(3) Section 12-201 (Revenue Bonds) allows the City to pledge revenues from presently owned facilities to secure revenue bonds for planned similar facilities. It also allows the City to issue revenue bonds to finance revenue producing facilities (including utility plants) inside or outside the City. The need for the City to have these broadened powers has not been demonstrated. The above changes neither "simplify" nor "clarify" the Charter.

Other revisions change basic procedures defining how the City shall deal with property owners on such matters as street and sewer improvements, assessments and collections. Articles 5, 6, 7 and 8 of Chapter IX (Local Improvements, Assessments, Collections) do not include certain provisions now found in the present Charter and charter ordinances which detail procedures to be followed by the City in giving notice to property owners, hearing objections, and assessing property. In their place the City Council is given the power to establish these procedures by ordinance, with no requirement that procedures used for one improvement be used for similar improvements. While these changes might "facilitate administration," the omission of provisions which heretofore have defined (and thereby protected) the rights of the property owner in his dealings with the City is objectionable.

"The effort behind this ballot measure has been substantial, but it is clearly not the best collective effort of the community."⁽⁴⁾

⁽⁴⁾ City Club Bulletin, Vol. 45, No. 22, October 30, 1964, page 140.

Unilateral revision of the Charter is undesirable. The Charter is the constitution of the City of Portland. It should be amended or revised with the same care and public participation that would be demanded for a revision of the state or federal constitutions. This Committee believes that a thorough review of the proposed revisions by a broadly based group of informed and interested citizens would reveal other or additional defects which your Committee has not discovered in the time available to it. It is probable that such a group would eliminate the objectionable aspects of the provisions noted in this report, would substantially improve other provisions, and upon completion of its work, lend weight to the efforts of the City to win voter approval of the Charter so revised. This Committee believes the city government stands only to gain from citizen participation in revising the Charter.

VII. RECOMMENDATION

Your Committee unanimously recommends that the City Club go on record as opposing the charter amendment and urges a vote of "No" on Municipal Measure No. 51.

Respectfully submitted,

L. James Bergmann
William H. Gregory
Irving J. Horowitz, M.D.
Leigh D. Stephenson
Ogden Beeman, *Chairman*

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REPORT
ON
PUBLIC TRANSPORTATION SYSTEM
EMPLOYEES CONSTITUTIONAL
AMENDMENT

(State Ballot Measure No. 1)

Purpose: Requires public bodies taking over any public transportation system to protect pension rights, job benefits, etc., of all existing and retired employes of old system.

To the Board of Governors,
The City Club of Portland:

I. BACKGROUND

Over the past twenty post-war years, the City Club has engaged in a number of studies involving various aspects of the urban transportation problem. The recurrent possibility of the cessation of business on the part of the present private transit system in Portland has made it essential that the City have adequate power to deal with any emergency that might arise. In 1962 a City Club committee, evaluating Municipal Measure No. 55 for "stand-by transit authorization," noted that one obstacle to any transfer from private to public ownership was the inability to continue retirement payments now being made from current revenues by the Rose City Transit Company. Legal opinion indicates that the State Constitution would prohibit any governmental agency assuming payments to individuals with whom it has no contractual obligation.

Looking to the past, the problem was created right after World War II when, by a narrow margin, the transit employees rejected the principle of funded pension payments. Portland Local 757 of the Amalgamated Transit Union, AFL-CIO, contained many members who held the hope that eventually the employees would come under the Railroad Retirement Act. These benefits, plus those from Social Security, would have obviated the need for a funded program on the part of the transit company. Payments direct from current revenues (the "fare-box" system) became increasingly uncertain as the decline in the use of public transit continued during the years after World War II.

II. THE PROPOSED AMENDMENT

(1) The Constitution of the State of Oregon is amended by creating a new section, to be added to and made a part of Article XI, and to read:

Section 13. Notwithstanding the provisions of section 20, Article I, section 10, Article VI, and sections 2 and 9, Article XI, of this Constitution, when any city, county, political subdivision, public agency or municipal corporation assumes responsibility for the operation of a public transportation system, the city, county, political subdivision, public agency or municipal corporation shall make fair and equitable arrangements to protect the interests of employes and retired employes affected. Such protective arrangements may include, without being limited to, such provisions as may be necessary for the preservation of rights, privileges and benefits (including continuation of pension rights and payment of benefits) under existing collective bargaining agreements, or otherwise.

Ballot Measure No. 1, adopted as House Joint Resolution 13 by the 1965 Oregon Legislature and referred by the Legislature to the people, is essentially an enabling act under which a public agency would be required to ". . . make fair and equitable arrangements to protect the interests of employes and retired employes affected" by acquisition of a private transit company. The Amendment is apparently aimed at the Portland situation, although it could apply to a handfull of other private companies in the State should any of them be acquired by a governmental agency.

A review of the legislative history of the proposed Amendment indicates that its primary objective is to protect employes in their expectation of retirement benefits, and retired employes in the continuation of such payments. But the Amendment would permit consideration by the public agency of other rights, privileges, and benefits. Thus the measure is both broad and flexible.

Section 20 of Article XI of the Constitution of the State of Oregon affirms the equal privileges of all citizens; Article VI contains the county home rule provisions, and Sections 2 and 9 of Article XI forbid assistance to private corporations. Any or all of these portions of the Constitution could come into play in the event a governmental agency should attempt to continue retirement payments to non-employes of a transportation system, and the proposed Amendment would make it possible to bridge this gap in the event of acquisition. It should be noted, however, that this proposal is an enabling act only, and is not intended to be for or against private or public operations of a transit system.

III. SCOPE OF INQUIRY

In addition to reviewing prior City Club reports in this field, the Committee, or individual members thereof, discussed the issues with the following:

Alexander Brown, City Attorney, City of Portland;

Mel Lienard, former Business Representative, Amalgamated Transit Union, Local #757.

Raymond I. Perkins, General Manager and Vice President, Rose City Transit Company.

Melvin W. Schoppert, Business Representative, Amalgamated Transit Union, Local #757.

No organized opposition to the proposed Amendment was encountered, but some of the arguments for and against the proposal are cited below.

IV. ARGUMENTS IN FAVOR

1. Transition from private to public operation of a transit company would be facilitated by a carry-over of employe benefits and retirement payments.
2. Should private transit operations continue, the assurance of protection for retirement and other benefits would remove an element of employe uncertainty that exists under the present situation. This uncertainty caused strong objection from employes to any governmental acquisition; and if removed would make possible continued recruitment and retention of capable employes under private operation, and an atmosphere where governmental acquisition could be debated on its merits without a cloud over employe rights.
3. In order for a municipality or other public body acquiring a transit system to treat fairly the interests of employes, regardless of age or duration of employment, it is necessary to give employes assurances of continued benefits or their equivalent, such as would be provided in the proposed enabling Amendment to the Constitution.

V. ARGUMENTS IN OPPOSITION

1. There is already too much competition from governmental agencies in the business affairs of its citizens, and it is not in the public interest to encourage this trend.

2. Most of the employees and retired employees that could be affected by an acquisition meeting the requirements of the proposed Amendment are already covered, to an extent at least, by the federal Social Security Act.
3. Transit employees deliberately chose to take their chances on the "fare-box" retirement payments (in addition to Social Security), and need not look to the taxpayers for extra "welfare" payments.
4. Terms of the proposed Amendment would raise the costs of acquiring any private system, but would not apply to a competitive entry into the field on the part of a public agency which chose not to acquire assets of a private system.

VI. DISCUSSION

In mergers or acquisitions, including those involved in the assumption of a transportation system, it is a matter of basic equity that assets and obligations involved be given every consideration. Certainly any interests of employees, whether or not expressed in written agreements, should be considered or otherwise compensated for by the acquiring entity. Nevertheless, government and corporate history is replete with instances in which the human interests and assets built up over long years of employment have not been given proper treatment in mergers, transfers, and acquisitions.

The City should have the right to consider *all* assets and obligations of any entity it might acquire—legal, financial, and moral. The Committee is of the opinion that the wording of the proposed amendment is broad enough to cover not only the retirement payments of former employees of a transit company, but to permit a reasonable retention of other benefits or their equivalent.

VII. CONCLUSIONS

Your Committee considers it unfortunate that the constitution of a state should be cluttered with the detail that is embodied in the proposed amendment, and that the Legislature saw fit to limit the amendment solely to transportation systems, but the Committee felt its consideration had to be restricted to the proposed measure.

Your Committee is unanimously agreed that the proposed Constitutional Amendment will facilitate full consideration of employee interests in any acquisition of a private transportation system by a public body, and that the requirement will not interfere with the market for any bond issue that might be involved in such acquisition. In addition, it may actually improve the employee relations climate in existing transit business should private operations continue.

VIII. RECOMMENDATION

For the above reasons, your Committee recommends that the City Club favor the proposed Amendment and urges a "Yes" vote on Measure No. 1 on the November state-wide ballot.

Respectfully submitted,

Craig Kelley
Richard A. Rubinstein
Phillip A. Levin
Richard E. Ritz
Walter A. Durham, Jr., *Chairman*

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